

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6700

**Case No. S-2486**

**PETITION OF GREEN ACRES, LLC**

OPINION OF THE BOARD

(Hearing dates: July 31, 2002 and September 4, 2002)  
(Effective date of Opinion: November 18, 2002)

Case No. S-2486 is a petition for a special exception to permit the owner to operate a riding stable pursuant to Section 59-G-2.49 of the Zoning Ordinance of Montgomery County, Maryland, *Montgomery County Code, 1994*, as amended (the Zoning Ordinance).

A public hearing was noticed pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Steven Orens, Esq., appeared for the applicant and William J. Roberts, Esq. appeared for Thomas and Judy Burruss and the Sugarloaf Citizens Association, Inc. in opposition to the petition. Martin Klauber, the People's Counsel for Montgomery County, Maryland, also participated in the proceedings.

**FINDINGS OF FACT**

The Board finds by a preponderance of the evidence that:

1. The proposed site is approximately 88 acres and is located at 15501 Partnership Road, Poolesville, Maryland in the Rural Density Transfer (RDT) zone, an agricultural zone.
2. The applicant proposes to construct and operate a riding stable/equestrian center for horse training, horse boarding, horse shows and instruction in equestrian sports.
3. The Maryland-National Capital Park and Planning Commission (M-NCPPC) reviewed plans for the proposed stable and recommended approval of the application, subject to several specific conditions (Exhibit 45). The staff report determined, among other things, that the riding stable use is allowed by special exception in the RDT zone (Exhibit 45, p. 8).

4. The Peoples Counsel, the Burrusses, and the Citizens Association contend that the riding stable as proposed, being greater than 25 acres, cannot obtain a special exception nor is it a permitted use under the Zoning Ordinance. They argue, therefore, that the Board lacks jurisdiction to hear the application and request that the Petition be dismissed.

5. The applicant contends that the use qualifies as a special exception under the Zoning Ordinance, and that the Department of Permitting Services has consistently interpreted the Ordinance to require a special exception where the subject property is greater than 25 acres. The applicant admitted that this interpretation has only been made once, and that was the present case.

6. On September 4, 2002, the Board heard oral argument from all parties on the motion to dismiss.

## **CONCLUSIONS OF LAW**

The Board agrees with the Peoples Counsel, the Burrusses, and the Citizens Association and finds that given the 88 acre size of the site, the proposed use does not require a special exception. The Board does not reach the question of whether the use is permitted.

The subject property is in the agricultural zone and is governed by Section 59-C-9(i) of the Zoning Ordinance. Under the use table in this section, riding stables may operate as "permitted" or "special exception" uses when located in the RDT zone, subject to the provisions in footnote 17. The Board finds that the language of footnote 17 is clear and unambiguous.

Footnote 17 states in pertinent part: "If more than two horse shows are conducted per year and the property contains less than 25 acres, a special exception is required." Because the applicant proposes to operate on a parcel which is greater than 25 acres, the proposed use would not require a special exception.

The Board finds the riding stable, as proposed, does not meet the requirements for a special exception. Therefore, the motion to dismiss the Petition is **GRANTED**.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 18<sup>th</sup> day of November, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2-A-10(f) of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

